



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS**

DRAFT

Date:	Enrolled	Bill No:	Assembly Bill 2756
Tax Program:	Property Diesel Fuel	Author:	Committee on Revenue and Taxation
Sponsor:	California Assessors' Association Author	Code Sections:	RTC 674 et seq. RTC 60501 & 60505.5
Related Bills:	AB 2757 (Bocanegra)	Effective Date:	01/01/15

BILL SUMMARY

This bill imposes certification and annual training requirements on state and county employees responsible for **property tax** change in ownership and exemption decisions.

This bill also allows a **diesel fuel tax** refund to a supplier for that portion of tax-paid biodiesel fuel removed from the terminal rack as a dyed biodiesel blend.

ANALYSIS

STATE AND COUNTY EMPLOYEE CERTIFICATION AND TRAINING
RTC §674 et seq.

CURRENT LAW

Existing California law¹ imposes certification and annual training requirements on property tax appraisers and auditor-appraisers that are state or county employees.² The law requires the Board of Equalization (BOE) to administer the property tax appraiser [certification program](#).³

The law does not impose certification requirements on employees involved in other aspects of property tax administration.

PROPOSED LAW

This bill requires any state or county employee that makes change in ownership decisions or property tax exemption decisions (excluding the homeowners' exemption) to hold a BOE-issued assessment analyst certificate. Employees that are already BOE-certified appraisers⁴ are excluded from these provisions. The law requires the assessor to hold an appraiser certification from the BOE.

This bill requires the employee to:

- Pass a certification examination.
- Annually receive 24 hours of BOE-approved or BOE-conducted training. Excess training hours may be carried forward for 3 years for certificate holders.

¹ Article 8 (commencing with Section 670) of Chapter 3 of Part 2 of Division 1 of the Revenue and Taxation Code (RTC).

² Including the city and county of San Francisco.

³ [Appraiser Training & Certification](#): BOE certification forms, reference materials, and training guidelines.

⁴ This includes elected and appointed assessors who must also hold this certification.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position

- Annually disclose financial interests in any legal entity.

It also requires the BOE to:

- Adopt regulations to define competency in change in ownership and exemption decisions.
- Create the certification examination in consultation with the California Assessors' Association.
- Prescribe an advanced course of training and create the advanced exam in consultation with the California Assessors' Association.
- Approve or conduct the required training.
- Revoke certifications for failure to complete required training.

The measure proposes **three different special certifications**:

- **Temporary Certification.** New employees that the BOE finds competent to make change in ownership and exemption decisions are eligible for a temporary certification. They could perform their duties for up to a one-year period before passing the exam. The certificate is not renewable.
- **Interim Certification.** Existing employees currently making change in ownership and exemption decisions are provided an interim certification that allows them to continue to do so for up to four years until they pass the new exam.
- **Advanced Certification.** Employees certificated for at least 3 years can complete an advanced course of study or pass an advanced level exam and receive an advanced certification. For advanced certification holders, the annual continuing education requirement reduces to 12 hours. Excess training hours may be carried forward for only 2 years.

Noncertificated staff. Assessors may use noncertificated staff to prepare and work with exemption applications and change in ownership documents, provided the noncertificated staff does not make change in ownership or exemption decisions.

This bill also renumbers RTC Section 674 related to contract appraisers to Section 680.

COMMENTS

1. **Sponsor and purpose.** The California Assessors' Association, the property tax provisions' sponsor, indicates that since current law requires appraisers to be certified, similar certification procedures are needed for state and local government employees making decisions in regard to change in ownership and property tax exemptions. Change in ownership and exemption decisions are highly complex, requiring a thorough understanding of different legal documents, statutes, regulations, and court decisions. This bill is intended to ensure employees making change in ownership and exemption decisions are adequately trained and educated.
2. **Amendments.** The **August 5, 2014 amendments** added back the property tax provisions contained in the May 23, 2014 version which had been removed in error. The **August 4, 2014 amendments** deleted the property tax provisions which were contained in the prior versions of the bill. The **May 23, 2014 amendments** codified previously uncoded property tax language pertaining to the work that noncertificated staff may undertake related to exemption applications and change in ownership documents.

3. **Appraiser certification pre-dates Proposition 13's change in ownership provisions.** Determining whether a property has changed ownership has become increasingly complex. For instance, the use of trusts in estate planning has grown substantially, resulting in more multifaceted transfers with documents that require additional analysis. Additionally, laws providing change in ownership exclusions, such as the parent-child exclusion and allowing base year value transfers, such as for persons over the age of 55, are increasingly detailed with many qualifications and conditions requiring analysis.
4. **Administration of the welfare exemption has changed.** The BOE now only issues organization clearance certificates. The assessor staff examines use of property and process annual welfare exemption applications. As such, assessor staff now bears more responsibility to determine exemption eligibility or partial eligibility.
5. **Certified appraisers excluded.** These provisions do not apply to persons already holding a valid appraiser's certificate. Because the county assessor must hold the appraiser certification, persons holding the office of assessor would be similarly excluded.
6. **Current employee impact.** Employees currently engaged in making change in ownership and exemption decisions would have four years to pass the exam.
7. **BOE to approve and track all the educational requirements.** The BOE does not anticipate being the primary education provider. Counties, the California Assessors' Administrative Services Association, and the BOE working together would provide education. The BOE would issue certifications, conduct tests, approve training, maintain and monitor training hours.
8. **BOE staff who are not certified property tax appraisers would also require certification.** Some BOE staff whose duties include exemption and change in ownership matters are not certified appraisers.
9. **The California Assessors' Association anticipates working with the BOE to develop regulations on implementing details.** The regulation would include defining "decisions" and setting competency standards for the testing and certification process.
10. **Suggested amendment to limit applicability.** The language tracks existing terminology related to employees of the "state, a county, or a city or county" for appraiser certification laws but that language is accompanied by a more specific job description effectively limiting its application. The phrase "make decisions" is not specific to a job title or task and could be broadly interpreted. For instance, the certification and training requirements this bill imposes could be read to be applicable to assessment appeal board members, county counsel staff that advises the appeals board or assessor, BOE legal staff, and BOE Members. For this reason, it is suggested the language be modified as follows:

674 (d) This section does not apply to a person holding a valid appraiser's or advanced appraiser's certificate issued by the board, a person rendering a decision in the adjudicatory process, or an attorney that is an employee of the state, a county, or a city or county.

REFUND ON TAX PAID DYED BIODIESEL
*RTC §§60501 and 60505.5***CURRENT LAW**

Under the Diesel Fuel Tax Law (DFTL),⁵ a \$0.11 per gallon excise tax⁶ is imposed on the removal of diesel fuel at the refinery or terminal rack,⁷ upon entry into the state, and upon sale to an unlicensed person. This tax is adjusted annually to balance the revenues from the additional sales taxes on diesel fuel against the diesel fuel excise tax rate reduction that occurred as a result of the Fuel Tax Swap.⁸

Existing law defines a terminal⁹ as a distribution facility supplied by pipeline or vessel (i.e., by bulk transfer), from which the diesel fuel may be removed at a rack. It also includes a diesel fuel production facility with storage that is not supplied by pipeline or vessel, from which the fuel produced may be removed at a rack. These diesel fuel production facilities have the same licensing and reporting requirements as distribution facilities currently supplied by pipeline or vessel.

Generally, the diesel fuel supplier owes excise tax at the time the diesel fuel is removed from the terminal rack.¹⁰ If the diesel fuel enters California outside the bulk transfer/terminal system (“below the rack”), for instance by train or truck, the excise tax is due once it enters California.¹¹

A supplier includes, among others, a person who owns the fuel in a terminal (position holder), a refiner, an enterer (importer), a blender, and a terminal operator. The Board of Equalization (BOE) requires a supplier to be licensed and file monthly returns or information reports that detail the amount of fuel entered, received, removed, and stored.

Exemptions and Refunds. Certain sales by diesel fuel suppliers are exempt from the excise tax, such as export for use outside the state, fuel used off-highway, or dyed diesel fuel.¹²

Certain persons may claim a credit or refund for the tax paid on fuel that is subsequently used in a nontaxable manner. Current law¹³ authorizes reimbursement of the tax paid on diesel fuel that meets any of the following conditions:

- Used for purposes other than operating motor vehicle on public highways of the state.
- Exported for use outside of this state.
- Used in construction equipment that is exempt from vehicle registration and operated on a construction project.

⁵ Part 31 (commencing with Section 60001) of Division 2 of the Revenue and Taxation Code (RTC).

⁶ The Board set the excise tax rate on diesel fuel at \$0.11 per gallon for the period of July 1, 2014, to June 30, 2015.

⁷ RTC Section 60006 refers to a series of pipes, a “rack,” as a mechanism for delivering fuel from a refinery or terminal into a truck, trailer, or other means of nonbulk transfer.

⁸ Additional sales and use tax rate on sales of diesel fuel imposed by AB 105 (Ch. 6, Stats. 2011): <http://www.boe.ca.gov/legdiv/pdf/0105abenrolledstw.pdf>

⁹ RTC Section 60003

¹⁰ RTC Section 60051

¹¹ RTC Section 60052

¹² RTC Section 60100

¹³ RTC Section 60501

- Used in a vehicle on any highway under the jurisdiction of the United States (U.S.) Department of Agriculture. To qualify for a refund, the user must have paid for or contributed to the construction or maintenance of the highway.
- Used in a motor vehicle owned and operated by a public agency or political subdivision of the state on highways constructed and maintained by the U.S. within a military reservation in California.
- Sold by a supplier to a consulate officer or employee under circumstances where the supplier would have been entitled to an exemption if the fuel had been sold directly to the consulate.
- Lost in the ordinary course of handling, transportation, or storage.
- Sold to the U.S. and its agents and instrumentalities under conditions that would have otherwise allowed a supplier to qualify for an exemption had that fuel been sold directly to the U.S.
- Sold to a train operator for use in a diesel-powered train or for other off-highway use under conditions that would have otherwise allowed a supplier to qualify for an exemption had that fuel been sold directly to the train operator.
- Removed from the terminal rack, but only to the extent that the supplier can show that tax on that same diesel fuel has been paid more than once by that supplier.

Biodiesel. California tax laws consider biodiesel to be a diesel fuel¹⁴ and subject to the diesel fuel excise tax rate. The fuel industry generally describes biodiesel by its percentage of biodiesel blended with petro diesel. For instance, a 100% biodiesel is described as B100 and a 5% biodiesel is B5, in which petro diesel represents 95% of the blend.

PROPOSED LAW

This bill allows a diesel fuel tax refund to a supplier for that portion of tax-paid biodiesel fuel removed from the terminal rack as a dyed biodiesel blend.

BACKGROUND

Most U.S. produced biodiesel comes from the Midwest region. Since this biodiesel distribution occurs outside the normal bulk transfer/terminal system it is subject to the diesel fuel tax upon entry into the state. As the biodiesel products enter the market from outside California, the enterer¹⁵ is responsible for the diesel fuel tax when it enters the state. Biodiesel that is produced in California (in-state), is generally taxed upon removal from the fuel production facilities rack, or, when the biodiesel “enters” the California market if removed from below the rack.¹⁶

In either of those cases, when another supplier makes a subsequent purchase of this tax-paid biodiesel to create a blended diesel fuel, the tax-paid biodiesel fuel is blended with ex-tax diesel fuel. When this blended diesel fuel is subsequently removed at the terminal rack, it may result in tax assessed twice on the biodiesel portion. In the case of a taxable removal, the state allows the supplier to claim a credit on their return as tax-paid twice by the same supplier.

¹⁴ RTC Section 60022

¹⁵ Importer of record or owner of the fuel; RTC Section 60013

¹⁶ “Below the rack” from outside the normal bulk transfer/terminal system means from outside the normal bulk transfer/terminal system.

However, some suppliers have been unable to receive a credit or refund for tax paid on biodiesel that enters the state, or is produced in-state, and is delivered into their terminals as tax-paid, but subsequently is removed at the terminal racks for a *nontaxable* purpose. While the current statute allows reimbursement for the second tax paid on diesel fuel by the same supplier, the statute does not account for tax-paid diesel fuel that is taxed coming into the terminal but removed for nontaxable purposes (e.g. dyed biodiesel blends). The supplier is unable to recover the tax from the customer and is also unable to seek reimbursement for the tax from the BOE. Since the tax-paid biodiesel is blended with ex-tax dyed diesel fuel, it is not subject to tax when it is removed from the terminal rack. Because there is no subsequent taxable event, the current statute does not provide for a reimbursement of the tax-paid portion of the biodiesel.

COMMENTS

- 1. Sponsor and Purpose.** This provision is sponsored by the Committee on Revenue and Taxation and is intended to address a diesel fuel tax issue wherein a supplier is unable to be reimbursed for excise taxes paid on fuel subsequently sold as a dyed biodiesel blend, which is not subject to tax when removed at the terminal rack.
- 2. The BOE would not have administrative issues with the refund provisions.** The BOE administers all provisions of the DFTL, including the exemption and refund provisions. BOE staff works closely with the fuel industry to be aware of industry trends and practices, and provides information and assistance in the form of [special notices, publications and reports](#), answers to [frequently asked questions](#), and [newsletters](#). The BOE has previously provided guidance to suppliers that refunds are not allowed for tax-paid biodiesel fuel converted to dyed biodiesel fuel.¹⁷
- 3. Related legislation.** AB 2757 (Bocanegra) contained identical tax paid biodiesel fuel tax provisions before being amended out in Senate Appropriations.

COST ESTIMATE

The BOE would incur costs to establish and conduct the assessment examinations, issue and maintain certifications, approve training courses, and track continuing education requirements. These costs are estimated to be \$175,000 in the first year, and \$151,000 annually thereafter.

The biodiesel fuel tax refund provision costs are absorbable.

REVENUE ESTIMATE

The Property Tax provisions do not have a revenue impact.

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

As explained in the biodiesel fuel Background section, current law allows a supplier to claim a credit or refund for tax-paid twice on the biodiesel portion that has been assessed tax twice. Since current statute does not allow a credit or refund to address the blended dyed biodiesel issue that this bill seeks to address, we cannot be certain how diesel fuel suppliers (taxpayers) are currently blending, or will be blending, the dyed biodiesel. Therefore, for purposes of this estimate, we assume the ratio of blending for tax-paid twice biodiesel (based on the refund data) is the same for blended dyed biodiesel. The revenue impact per fiscal year (FY) is as follows:

¹⁷ http://www.boe.ca.gov/pdf/pub201_Dec_2012.pdf. See especially pp. 3 & 4, "Diesel Fuel Tax."

For FY 2011-12:

- Taxable biodiesel removed totaled 94.9 million gallons.
- Taxpayers filed a claim for refund on 3.0 million gallons of tax-paid biodiesel.
- Tax rate for FY 2011/12 was \$0.13 per gallon.
- Up to 3.2% (3 million /94.9 million = 3.2%) of exempt dyed diesel fuel may be subject to a refund of excise taxes paid.
- Estimated refunds would amount to approximately \$395,000 (94.9 million x 3.2% x \$0.13 excise tax = \$394,784).

For FY 2012-13:

- Taxable biodiesel removed totaled 228.9 million gallons.
- Taxpayers filed claims for refund on 7.9 million gallons of tax-paid biodiesel.
- Tax rate for FY 2012/13 was \$0.10 per gallon
- Up to 3.5% (7.9 million /228.9 million = 3.5%) of ex-tax dyed diesel fuel may be subject to a refund of excise taxes paid.
- Estimated refunds would amount to approximately \$800,000 (228.9 million x 3.5% x \$0.10 excise tax =\$801,150)

REVENUE SUMMARY

BOE staff estimates the potential overpayment of diesel fuel tax, applied to the data for FY's 2011-12 and 2012-13, is \$395,000 and \$800,000, respectively.

Qualifying Remarks.

- In the future, we can expect taxpayers to blend up to 5% biodiesel into all petroleum diesels to meet the required California Air Resources Board Low Carbon Fuel Standards mitigation measures.
- Diesel fuel tax rate is subject to an annual rate change effective July 1 of each fiscal year. The rate for FY 2014-15 will be \$.011 per gallon.¹⁸
- This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.

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¹⁸ This rate was effective July 1, 2014. See here for more detailed information:
http://www.boe.ca.gov/meetings/pdf/022514_P1_1_Fuel_Tax_Swap_Memo.pdf